

State of Wisconsin
2007 - 2008 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Reber

1 AN ACT *to renumber* 939.617 (3); *to renumber and amend* 939.617 (1) and
2 939.617 (2); *to amend* 301.48 (1) (e) 1., 341.16 (1) (a) and 341.16 (4); *to repeal*
3 *and recreate* 948.02 (1), 948.025 (1) and 948.025 (2); and *to create* 301.48 (1)
4 (e) 2. d., 301.49, 341.14 (6y), 341.16 (1) (c) and 939.616 (1g) of the statutes;
5 **relating to:** vehicle registration plates for certain sex offenders, reconciling
6 2005 Wisconsin Acts 430, 431, and 437, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill requires certain sex offenders to replace the license plates on all vehicles that they own with special chartreuse-colored license plates. A person who intentionally violates this requirement is guilty of a Class G felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to ten years (which, as with other felonies, includes a term of confinement and a term of extended supervision if the sentence is for more than one year) or both. The bill also prohibits those persons from operating a motor vehicle on a highway unless it displays chartreuse-colored license plates. A person who intentionally violates this prohibition is guilty of a Class H felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years or both.

In general, the special license plate provisions apply to four groups of sex offenders: 1) sex offenders being tracked, after July 1, 2007, by a global positioning system (GPS) tracking device, which includes persons convicted of engaging in

sexual intercourse with a person who was under 12 years old, persons who were convicted of engaging in sexual intercourse with a person who was under 16 years old by use or threat of force or violence, persons over the age of 18 who were convicted of engaging in sexual contact with a person who was under 16 years old by use of threat of force or violence, and, at the discretion of the Department of Corrections (DOC), as a condition of their release, persons on probation, extended supervision, or parole for committing a sex offense; 2) any registered sex offender if his or her registration requirement is based on a serious child sex offense, as defined in the bill; 3) persons placed on supervised release; and 4) persons who committed any other type of sex offense that triggers the sex offender registration requirements if DOC requires the provisions to apply. or *

Persons in the first group and second group are subject to the special license plate provisions established in the bill as long as they are subject to the GPS tracking requirement or the requirement to register as a sex offender unless a court grants a petition to terminate the requirement to have the special license plate. The court may grant a petition if: 1) the person has not been convicted of a crime that was committed while the person was subject to the special license plate provisions; 2) the person has been subject to the special license plate provisions for at least 20 years; and 3) the court determines that requiring that the person have the special license plate is no longer necessary to protect the public. If the court denies a person's petition, the person may not file a subsequent petition for five years. In addition, the court may grant a petition filed by DOC with respect to a person in the first, second, or third group if: 1) the petition alleges that the person is permanently physically incapacitated; 2) it includes affidavits from two physicians that explain the nature of the person's permanent physical incapacitation; and 3) the court determines that the person is permanently physically incapacitated so that he or she is not a danger to the public.

This bill reconciles 2005 Wisconsin Acts 430, 431, and 437. In 2005 Wisconsin Acts 430 and 437, sections 948.02 (1) (first-degree sexual assault of a child) and 948.025 (repeated acts of sexual assault of the same child) were renumbered and amended in ways that were not compatible. This bill repeals and recreates these statutes to accommodate the renumbering and to include all of the substantive provisions but intends no substantive change with the repeal and recreate.

In addition, 2005 Wisconsin Act 437 created a Class A felony for first-degree sexual assault and repeated acts of sexual assault of the same child, which includes both sexual intercourse and sexual contact, that results in great bodily harm to the victim (Class A felony). But the 25-year mandatory minimum incarceration provisions and the global positioning system (GPS) tracking provisions created in 2005 Wisconsin Acts 430 and 431, respectively, do not currently apply to the Class A felony. This bill applies the 25-year mandatory minimum incarceration requirement and the GPS tracking requirement to the Class A felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 25.40 (1) (a) 3. of the statutes is amended to read:

2 25.40 (1) (a) 3. Revenues collected under ss. 341.09 (2) (d), (2m) (a) 1., (4), and
3 (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1)
4 (a) ~~and (b)~~ to (c), (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a),
5 (b), and (c), (4), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7),
6 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3),
7 341.305 (3), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14
8 (1r), that are pledged to any fund created under s. 84.59 (2).

9 **SECTION 2.** 84.59 (2) (b) of the statutes is amended to read:

10 84.59 (2) (b) The department may, under s. 18.562, deposit in a separate and
11 distinct special fund outside the state treasury, in an account maintained by a
12 trustee, revenues derived under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2),
13 (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1) (a) ~~and (b)~~ to
14 (c), (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), (4),
15 and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1),
16 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3), 341.305 (3),
17 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14 (1r). The
18 revenues deposited are the trustee's revenues in accordance with the agreement
19 between this state and the trustee or in accordance with the resolution pledging the
20 revenues to the repayment of revenue obligations issued under this section. Revenue
21 obligations issued for the purposes specified in sub. (1) and for the repayment of

1 which revenues are deposited under this paragraph are special fund obligations, as
2 defined in s. 18.52 (7), issued for special fund programs, as defined in s. 18.52 (8).

3 **SECTION 3.** 165.8285 (1m) of the statutes is created to read:

4 165.8285 (1m) For the purpose of determining if a person is violating s. 301.49
5 (3), the department of justice shall, through the transaction information for
6 management of enforcement system, provide local law enforcement agencies with
7 access to the information provided under s. 301.49 (2m) by the department of
8 corrections under s. 301.49 (2m) (a) or by the department of health and family
9 services under s. 301.49 (2m) (b).

10 **SECTION 4.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act
11 431, is amended to read:

12 301.48 (1) (e) 1. Section 948.02 (1) (am), (b), (c), or (d) or 948.025 (1) (a), (b), or
13 (ag) (c).

14 **SECTION 5.** 301.48 (1) (e) 2. d. of the statutes is created to read:

15 301.48 (1) (e) 2. d. The actor has sexual contact or sexual intercourse with a
16 person who has not attained the age of 13 years and the sexual contact or sexual
17 intercourse results in great bodily harm, as defined in s. 939.22 (14), to the person.

18 **SECTION 6.** 301.49 of the statutes is created to read:

19 **301.49 Vehicle registration plates for certain sex offenders. (1)**

20 **DEFINITIONS.** In this section:

21 (a) "Serious child sex offense" has the meaning given in s. 301.48 (1) (e).

22 (b) "Sex offense" means any of the following offenses, other than one that is a
23 serious child sex offense:

24 1. A sex offense, as defined in s. 301.45 (1d) (b).

1 2. A crime under federal law or the law of any state that is comparable to a crime
2 described in subd. 1.

3 **(2) WHO IS COVERED.** (a) A person who is subject to the global positioning system
4 tracking requirement under s. 301.48 (2) or (2m) is subject to the vehicle registration
5 plate requirement and prohibition under sub. (3) until the person is released from
6 the global positioning system tracking requirement under s. 301.48 (2) or (2m), until
7 his or her death, or until otherwise terminated under sub. (6) or (7).

8 (b) If a person is required to be registered as a sex offender under s. 301.45 due
9 to a commission of a serious child sex offense and par. (a) does not apply, he or she
10 is subject to the vehicle registration plate requirement and prohibition under sub.
11 (3) until he or she is no longer required to register as a sex offender under s. 301.45,
12 until his or her death, or until otherwise terminated under sub. (6) or (7).

13 (c) If a person is on supervised release under s. 980.08 (6m) and par. (a) does
14 not apply, he or she is subject to the vehicle registration plate requirement and
15 prohibition under sub. (3) until his or her death or until otherwise terminated under
16 sub. (7).

17 (d) If a person is on parole, or has been discharged, under ch. 975, by the
18 department of health and family services following a commitment that was based on
19 his or her commission of a serious child sex offense and par. (a) does not apply, he or
20 she is subject to the vehicle registration plate requirement and prohibition under
21 sub. (3) until his or her death or until otherwise terminated under sub. (7).

22 (e) If a person has been convicted under federal law or the law of any other state
23 of a crime that is comparable to a serious child sex offense or found not guilty of or
24 not responsible for such a crime by reason of mental disease or mental defect, the
25 person is subject to the vehicle registration plate requirement and prohibition under

1 sub. (3) for as long as he or she resides in this state, is employed or carrying on a
2 vocation, as defined in s. 301.45 (1d) (a), in this state, or is a student, as defined in
3 s. 301.45 (1d) (c), in this state or until that requirement and that prohibition are
4 otherwise terminated under sub. (6) or (7).

5 (f) If a person has committed a sex offense and par. (a), (b), (c), (d), or (e) does
6 not apply, the department may require the person to comply with sub. (3) as a
7 condition of the person's probation, extended supervision, or parole.

8 **(2m) INFORMATION ACCESS.** (a) The department shall provide to the department
9 of justice information sufficient to identify the persons who are covered under sub.
10 (2) (a), (b), (e), or (f) for the purpose of s. 165.8285 (1m).

11 (b) Unless par. (a) requires the department to provide to the department of
12 justice information sufficient to identify the persons who are covered under sub. (2)
13 (c) or (d), the department of health and family shall provide to the department of
14 justice information sufficient to identify the persons who are covered under sub. (2)
15 (c) or (d) for the purpose of s. 165.8285 (1m).

16 **(3) VEHICLE REGISTRATION PLATE REQUIREMENTS.** (a) A person covered under sub.
17 (2) who applies to the department of transportation for registration of a motor vehicle
18 under ch. 341 shall identify himself or herself in the application as a person to whom
19 special registration plates shall be issued under s. 341.14 (6y).

20 (b) If a person registered in his or her name any motor vehicle under ch. 341
21 prior to becoming covered under sub. (2), the person shall, immediately after
22 becoming covered under sub. (2), apply to the department of transportation for
23 replacement registration plates under s. 341.16 (1) (c) for each such vehicle,
24 identifying himself or herself in the application for replacement registration plates
25 as a person to whom special registration plates shall be issued under s. 341.14 (6y).

1 (c) A person covered under sub. (2) may not operate on a highway, as defined
2 in s. 340.01 (22), a motor vehicle required to be registered under ch. 341 unless it
3 displays registration plates issued under s. 341.14 (6y).

4 (4) PENALTIES. (a) Whoever intentionally violates sub. (3) (a) or (b) is guilty of
5 a Class G felony.

6 (b) Whoever intentionally violates sub. (3) (c) is guilty of a Class H felony.

7 (5) NOTIFICATION. (a) The department shall notify a person under sub. (2) (a),
8 (b), (e), or (f) of his or her need to comply with the vehicle registration plate
9 requirement and prohibition under sub. (3).

10 (b) If the person is not already required to be notified under par. (a), the
11 department of health and family services shall notify the person under sub. (2) (c)
12 or (d) of his or her need to comply with the vehicle registration plate requirement and
13 prohibition under sub. (3).

14 (c) After notifying a person under par. (a) or (b) of the need to comply with this
15 section, the person who is providing the notification shall require the person who is
16 being notified to read and sign a form stating that he or she has been informed of the
17 requirements of this section.

18 (d) It is not a defense to liability under sub. (4) (a) or (b) that the person subject
19 to sub. (3) was not required to read and sign a form under par. (c), was not provided
20 with a form to read and sign under par. (c), or failed or refused to read or sign a form
21 under par. (c). It is not a defense to liability under sub. (4) (a) or (b) that the person
22 subject to sub. (3) did not receive notice under this subsection from the department
23 of health and family services or the department of corrections.

24 (6) OFFENDER'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT. (a)
25 Subject to par. (b), a person who is subject to sub. (3) may file a petition requesting

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1 that the requirement and the prohibition in sub. (3) be terminated for him or her.
2 A person shall file a petition requesting termination of the requirement and the
3 prohibition in sub. (3) with the circuit court for the county in which the person was
4 convicted or found not guilty or not responsible by reason of mental disease or defect.

5 (b) 1. A person may not file a petition requesting termination of the
6 requirement and the prohibition in sub. (3) if he or she has been convicted of a crime
7 that was committed while he or she was subject to sub. (3).

8 2. A person may not file a petition requesting termination of the requirement
9 and the prohibition in sub. (3) earlier than 20 years after the date on which the person
10 first became subject to sub. (3). If a person files a petition requesting termination
11 of the requirement and the prohibition in sub. (3) at any time earlier than 20 years
12 after the date on which the person first became subject to sub. (3), the court shall
13 deny the petition without a hearing.

14 3. This subsection does not apply to a person described in sub. (2) (c) or in s.
15 301.48 (2) (b).

16 (c) Upon receiving a petition requesting termination of the requirement and the
17 prohibition in sub. (3), the court shall send a copy of the petition to the district
18 attorney responsible for prosecuting the offense that was the basis for sub. (3)
19 applying to the petitioner. Upon receiving the copy of the petition, the district
20 attorney shall conduct a criminal history record search to determine whether the
21 petitioner has been convicted of a criminal offense that was committed while he or
22 she was subject to sub. (3). No later than 30 days after the date on which he or she
23 receives the copy of the petition, the district attorney shall report the results of the
24 criminal history record search to the court and may provide a written response to the
25 petition.

1 (d) After reviewing a report submitted under par. (c) concerning the results of
2 a criminal history record search, the court shall do whichever of the following is
3 applicable:

4 1. If the report indicates that the petitioner has been convicted of a criminal
5 offense that was committed while he or she was subject to sub. (3), the court shall
6 deny the petition without a hearing.

7 2. If the report indicates that the petitioner has not been convicted of a criminal
8 offense that was committed while he or she was subject to sub. (3), the court shall
9 order the petitioner to be examined under par. (e), shall notify the department that
10 it may submit a report under par. (f) and shall schedule a hearing on the petition to
11 be conducted as provided under par. (g).

12 (e) A petitioner who is entitled to a hearing under par. (d) 2. shall be examined
13 by a person who is either a physician or a psychologist licensed under ch. 455 and who
14 is approved by the court. The physician or psychologist who conducts an examination
15 under this paragraph shall prepare a report of his or her examination that includes
16 his or her opinion of whether the petitioner is a danger to the public. The physician
17 or psychologist shall file the report of his or her examination with the court within
18 60 days after completing the examination, and the court shall provide copies of the
19 report to the petitioner and the district attorney. The contents of the report shall be
20 confidential until the physician or psychologist testifies at a hearing under par. (g).
21 The petitioner shall pay the cost of an examination required under this paragraph.

22 (f) After it receives notification from the court under par. (d) 2., the department
23 may prepare and submit to the court a report concerning the petitioner. If the
24 department prepares and submits a report under this paragraph, the report shall
25 include information concerning the petitioner's conduct while subject to sub. (3) and

1 an opinion as to whether subjecting the petitioner to sub. (3) is still necessary to
2 protect the public. When a report prepared under this paragraph has been received
3 by the court, the court shall, before the hearing under par. (g), disclose the contents
4 of the report to the attorney for the petitioner and to the district attorney. When the
5 petitioner is not represented by an attorney, the contents shall be disclosed to the
6 petitioner.

7 (g) A hearing on a petition requesting termination of the requirement and the
8 prohibition in sub. (3) may not be conducted until the petitioner has been examined
9 and a report of the examination has been filed as provided under par. (e). At the
10 hearing, the court shall take evidence it considers relevant to determining whether
11 sub. (3) should continue to apply because the petitioner is a danger to the public. The
12 petitioner and the district attorney may offer evidence relevant to the issue of the
13 petitioner's dangerousness and the continued need for sub. (3) to apply.

14 (h) The court may grant a petition requesting termination of the requirement
15 and the prohibition in sub. (3) if it determines after a hearing under par. (g) that
16 subjecting the petitioner is no longer necessary to protect the public.

17 (i) If a petition filed under this subsection is denied after a hearing under par.
18 (g), the person may not file a subsequent petition under this subsection until at least
19 5 years have elapsed since the most recent petition was denied.

20 **(7) DEPARTMENT'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT.**

21 (a) The department may file a petition requesting that the requirement and the
22 prohibition in sub. (3) be terminated with respect to a person if the person is
23 permanently physically incapacitated. The petition shall include affidavits from 2
24 physicians that explain the nature of the person's permanent physical
25 incapacitation.

1 (b) 1. The department shall file a petition under par. (a) with the circuit court
2 for the county in which the person was convicted or found not guilty or not
3 responsible by reason of mental disease or defect or, in the case of a person described
4 in sub. (2) (c) or s. 301.48 (2) (b), the circuit court for the county in which the person
5 was found to be a sexually violent person.

6 2. The department shall send a copy of a petition filed under subd. 1. to the
7 district attorney responsible for prosecuting the offense that was the basis for sub.
8 (3) applying to the person or, in the case of a person described in sub. (2) (c) or s. 301.48
9 (2) (b), the agency that filed the petition under s. 980.02.

10 (c) Upon its own motion or upon the motion of the party to whom the petition
11 was sent under par. (b) 2., the court may order that the person to whom the petition
12 relates be examined by a physician who is approved by the court. The physician who
13 conducts an examination under this paragraph shall prepare a report of his or her
14 examination that includes his or her opinion of whether the person is permanently
15 physically incapacitated. The physician shall file the report of his or her examination
16 with the court within 60 days after completing the examination, and the court shall
17 provide copies of the report to the department and the party to whom the petition was
18 sent under par. (b) 2. The contents of the report shall be confidential until the
19 physician testifies at a hearing under par. (d). The department shall pay the cost of
20 an examination required under this paragraph.

21 (d) The court shall conduct a hearing on a petition filed under par. (b) 1., but
22 if the court has ordered a physical examination under par. (c), the hearing may not
23 occur until after the examination is complete and a report of the examination has
24 been filed as provided under par. (c). At the hearing, the court shall take evidence
25 it considers relevant to determining whether the person to whom the petition relates

1 is permanently physically incapacitated so that he or she is not a danger to the
2 public. The department and the party to whom the petition was sent under par. (b)
3 2. may offer relevant evidence regarding that issue.

4 (e) The court may grant a petition filed under par. (b) 1. if it determines after
5 a hearing under par. (d) that the person to whom the petition relates is permanently
6 physically incapacitated so that he or she is not a danger to the public.

7 **SECTION 7.** 341.01 (2) (c) of the statutes is created to read:

8 341.01 (2) (c) "Sex offender" means a person who is covered under s. 301.49 (2).

9 **SECTION 8.** 341.08 (1m) of the statutes is amended to read:

10 341.08 (1m) The forms for application for original registration and for renewal
11 of registration under sub. (1) shall include the information required under s. 85.103
12 (2) and, the applicant's birth date, and whether the applicant is a sex offender.

13 **SECTION 9.** 341.14 (6y) of the statutes is created to read:

14 341.14 (6y) (a) Upon application by a person who is a sex offender, the
15 department shall issue and deliver to the person plates of a special design, in lieu of
16 the plates that ordinarily would be issued for the vehicle, and shall renew the plates.
17 The plates shall have a chartreuse-colored background. The department shall
18 design the plates so as to readily apprise law enforcement officers of the fact that the
19 vehicle is owned by a sex offender. No charge in addition to the registration fee shall
20 be made for the issuance or renewal of such plates. If at any time the owner of the
21 vehicle is no longer a sex offender, the owner may dispose of these special plates in
22 a manner prescribed by the department and shall obtain replacement plates for the
23 vehicle.

24 **SECTION 10.** 341.145 (1) (g) of the statutes is created to read:

1 341.145 (1) (g) A registration plate of the same color and design as provided in
2 s. 341.14 (6y) for a vehicle registered by a sex offender, which displays a registration
3 number composed of letters or numbers, or both, not exceeding 6 positions and not
4 less than one position, requested by the applicant.

5 **SECTION 11.** 341.145 (1g) (f) of the statutes is created to read:

6 341.145 (1g) (f) The department may issue personalized registration plates
7 under sub. (1) (g) to a person who is required to obtain special plates issued under
8 s. 341.14 (6y).

9 **SECTION 12.** 341.16 (1) (c) of the statutes is created to read:

10 341.16 (1) (c) Upon receipt of an application by a sex offender required under
11 s. 301.49 (3) (b) to be issued special registration plates under s. 341.14 (6y), along
12 with a fee of \$10 for each plate, the department shall issue replacement plates under
13 s. 341.14 (6y). Upon receipt of these replacement registration plates, the applicant
14 shall remove and destroy all registration plates replaced.

15 **SECTION 13.** 341.16 (4) of the statutes is amended to read:

16 341.16 (4) Any person issued replacement plates who fails to destroy the
17 original plates as required by sub. (1)(c), (2), or (3) may be required to forfeit not more
18 than \$200.

19 **SECTION 14.** 939.616 (1g) of the statutes is created to read:

20 939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or
21 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make
22 an extended supervision eligibility date determination on a date that will occur
23 before the person has served a 25-year term of confinement in prison.

24 **SECTION 15.** 939.617 (1) of the statutes, as created by 2005 Wisconsin Act 430,
25 is renumbered 939.616 (1r) and amended to read:

1 939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or
2 948.025 (1) (a) (b), the court shall impose a bifurcated sentence under s. 973.01. The
3 term of confinement in prison portion of the bifurcated sentence shall be at least 25
4 years. Otherwise the penalties for the crime apply, subject to any applicable penalty
5 enhancement.

6 **SECTION 16.** 939.617 (2) of the statutes, as created by 2005 Wisconsin Act 430,
7 is renumbered 939.616 (2) and amended to read:

8 939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025
9 (1) (ag) (c), the court shall impose a bifurcated sentence under s. 973.01. The term
10 of confinement in prison portion of the bifurcated sentence shall be at least 5 years.
11 Otherwise the penalties for the crime apply, subject to any applicable penalty
12 enhancement.

13 **SECTION 17.** 939.617 (3) of the statutes, as created by 2005 Wisconsin Act 430,
14 is renumbered 939.616 (3).

15 **SECTION 18.** 948.02 (1) of the statutes is repealed and recreated to read:

16 948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (a) In this subsection, "sexual
17 intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal
18 intercourse between persons or any intrusion of any inanimate object into the genital
19 or anal opening either by the defendant or upon the defendant's instruction. The
20 emission of semen is not required.

21 (am) Whoever has sexual contact or sexual intercourse with a person who has
22 not attained the age of 13 years is guilty of a Class A felony if the sexual contact or
23 sexual intercourse results in great bodily harm to the person.

24 (b) Whoever has sexual intercourse with a person who has not attained the age
25 of 12 years is guilty of a Class B felony.

1 (c) Whoever has sexual intercourse with a person who has not attained the age
2 of 16 years by use or threat of force or violence is guilty of a Class B felony.

3 (d) Whoever has sexual contact with a person who has not attained the age of
4 16 years by use or threat of force or violence is guilty of a Class B felony if the actor
5 is at least 18 years of age when the sexual contact occurs.

6 (e) Whoever has sexual contact with a person who has not attained the age of
7 13 years is guilty of a Class B felony.

8 **SECTION 19.** 948.025 (1) of the statutes is repealed and recreated to read:

9 948.025 (1) (a) A Class A felony if at least 3 of the violations were violations of
10 s. 948.02 (1) (am).

11 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
12 (am), (b), or (c) but fewer than 3 of the violations were violations of s. 948.02 (1) (am).

13 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
14 (am), (b), (c), or (d) but fewer than 3 of the violations were violations of s. 948.02 (1)
15 (am), (b), or (c).

16 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
17 (am), (b), (c), (d), or (e) but fewer than 3 of the violations were violations of s. 948.02
18 (am), (b), (c), or (d).

19 **SECTION 20.** 948.025 (2) of the statutes is repealed and recreated to read:

20 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find
21 the defendant guilty the members of the jury must unanimously agree that at least
22 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need
23 not agree on which acts constitute the requisite number.

24 (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant
25 guilty the members of the jury must unanimously agree that at least 3 violations of

1 s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not
2 agree on which acts constitute the requisite number and need not agree on whether
3 a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

4 (c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant
5 guilty the members of the jury must unanimously agree that at least 3 violations of
6 s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need
7 not agree on which acts constitute the requisite number and need not agree on
8 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

9 (d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant
10 guilty the members of the jury must unanimously agree that at least 3 violations of
11 s. 948.02 (1) (am), (b), (c), (d), or (e) occurred within the specified period of time but
12 need not agree on which acts constitute the requisite number and need not agree on
13 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), (d), or (e).

14 **SECTION 21. Nonstatutory provisions.**

15 (1) In this section, "sex offender" has the meaning given in section 341.01 (2)
16 (c) of the statutes, as created by this act.

17 (2) Not later than 60 days after the effective date of this subsection, a person
18 who, as of the effective date of this subsection, is a sex offender and who has any
19 motor vehicle registered in his or her name under chapter 341 of the statutes shall
20 apply to the department of transportation for replacement registration plates for
21 each such vehicle, identifying himself or herself in the application as a person to
22 whom special registration plates shall be issued under section 341.14 (6y) of the
23 statutes, as created by this act. Upon receipt of such an application, along with a fee
24 of \$10 for each plate, the department of transportation shall issue to the applicant
25 replacement registration plates under section 341.14 (6y) of the statutes, as created

1 by this act. Upon receipt of these replacement registration plates, the applicant shall
2 remove and destroy all registration plates replaced.

3 **SECTION 22. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) The treatment of sections 25.40 (1) (a) 3., 84.59 (2) (b), 301.49, 341.01 (2) (c),
6 341.08 (1m), 341.14 (6y), 341.145 (1) (g) and (1g) (f), and 341.16 (1) (c) and (4) of the
7 statutes and SECTION 21 of this act take effect on the first day of the 6th month
8 beginning after publication.

9 (2) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect
10 on July 1, 2007.

11 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

P3 dn
LRB-0702/P2dn
CMH&ARG:lmk:nwn

January 3, 2007

Jonna:

Please review the effective date provision. I made the act effective on the first day of the sixth month beginning after publication to give DOT time to create the license plates and the persons subject to the license plate requirement and prohibition time to acquire them. Is that time frame okay?

This bill has a retroactive application. It applies to all persons registered as sex offenders if a serious child sex offense is the basis for the registration requirement and to all persons on supervised release. This is different than the GPS tracking requirement in s. 301.48, which, except for persons covered under s. 301.48 (2) (c), the event that triggers the GPS requirement has to occur on or after July 1, 2007. I am noting this only because I want to make sure that this is what you intend. The retroactive application may increase the fiscal estimate since the requirement will apply to more people and DOC and DHFS will have to notify more people.

Please note that a court could find that these requirements violate the ex post facto clause of the constitution if the requirements are seen to be punitive in nature, either in purpose or effect, and thus retroactive punishment—versus a nonpunitive regulatory scheme enacted for public protection. See *Smith v. Doe*, 538 U.S. 84, 2003. This bill goes beyond registration and GPS tracking in that it may limit employment opportunities (versus just conjecture that registration requirements will cause employers to deny employment); for instance, these people could not work at positions that require them to drive a company vehicle. Thus the individuals are limited from changing jobs, which could be viewed as punitive. I did not find examples of other jurisdictions imposing such requirements so I do not know how other courts have interpreted similar provisions.

Should there be exceptions? What if, ^{again} ~~for instance~~, a person earns his or her livelihood driving a company vehicle ~~in this sense, this bill may be seen as punitive because it may limit persons covered from changing jobs?~~ Maybe the exception could require that the person notify DOC? Or what if there are extenuating circumstances—a person drives another person's car to get that person to the hospital or because that person is not able to drive for other reasons (such as intoxication for instance)?

Note that I reconciled Acts 430, 431, and 437 in this bill. I did this to clarify definitions and cross-references. Otherwise this bill would be a great deal longer and more

exception
or petition a court for an exception

*be redundant
and without
effect*

confusing right now; also, once those Acts were reconciled the language incorporating the current statutes would be superfluous. OK? If those acts are reconciled before you introduce this bill, then I can redraft this bill to eliminate the reconciliation provisions.

* If this bill is already introduced, the reconciliation provisions will ~~not have any effect~~.

Please review the penalty provisions. You asked for a maximum imprisonment sentence of 10 years. So I made the violations Class G and Class H felonies. Please be aware that these are bifurcated sentences so that the 10 year maximum includes a term of confinement and a term of extended supervision.

Please note that this bill has a person's status as a person covered under s. 301.49 (2) readily available to law enforcement through the TIME system. Is that the manner in which you prefer an officer to know, upon stopping a person, that the person is violating s. 301.49 (3) (b) or (c)? Or would you prefer the person to have a distinctive driver's license as well?

I made this draft a preliminary draft because I anticipate that you may want changes. It will have to be redrafted before it can be introduced.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Please review the attached draft carefully to ensure that it is consistent with your intent. I have revised some of the provisions from the 2005 draft.

The attached draft allows these chartreuse "sex offender" license plates to be personalized. Is this okay? Also, the attached draft does not require these sex offender license plates to be redesigned every ten years, as most license plates are. See s. 341.135. Is this okay? I believe that created s. 301.49 (3) (b) in the 2005 draft was overbroad and have revised that provision. Is the provision (now created s. 301.49 (3) (c)) consistent with your intent? Also, I have revised the provision relating to how this bill is phased-in to apply to different vehicle registration circumstances of sex offenders. See created s. 301.49 (3) (a) and (b) and bill section 21 [nonstatutory provision]. Is this okay?

Do you want the notice required under created s. 301.49 (5) in the attached draft to also be sent to DOT?

The attached draft will have a financial impact upon DOT. Do you want to provide for an additional fee for the sex offender license plates or to increase DOT's DMV appropriation to make up this cost or both?

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/P3dn
CMH&ARG:lmk:rs

January 4, 2007

Jonna:

Please review the effective date provision. I made the act effective on the first day of the sixth month beginning after publication to give DOT time to create the license plates and the persons subject to the license plate requirement and prohibition time to acquire them. Is that time frame okay?

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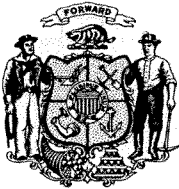
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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0702/P3
CMH&ARG:lmk/rs

FRIDAY
P.M.

stys

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

URS: PS/AR

Note

reg. car

✓

1 AN ACT *to renumber* 939.617 (3); *to renumber and amend* 939.617 (1) and
2 939.617 (2); *to amend* 25.40 (1) (a) 3., 84.59 (2) (b), 301.48 (1) (e) 1., 341.08 (1m)
3 and 341.16 (4); *to repeal and recreate* 948.02 (1), 948.025 (1) and 948.025 (2);
4 and *to create* 165.8285 (1m), 301.48 (1) (e) 2. d., 301.49, 341.01 (2) (c), 341.14
5 (6y), 341.145 (1) (g), 341.145 (1g) (f), 341.16 (1) (c) and 939.616 (1g) of the
6 statutes; **relating to:** vehicle registration plates for certain sex offenders,
7 reconciling 2005 Wisconsin Acts 430, 431, and 437, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill requires certain sex offenders to replace the license plates on all vehicles that they own with special chartreuse-colored license plates. A person who intentionally violates this requirement is guilty of a Class G felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to ten years (which, as with other felonies, includes a term of confinement and a term of extended supervision if the sentence is for more than one year) or both. The bill also prohibits those persons from operating a motor vehicle on a highway unless it displays chartreuse-colored license plates. A person who intentionally violates this prohibition is guilty of a Class H felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years or both.

~~In general,~~ the special license plate provisions apply to ~~four groups of sex offenders.~~ sex offenders being tracked, after July 1, 2007, by a global positioning

on or

These sex offenders *IN 5 A*

system (GPS) tracking device, *which* includes persons convicted of engaging in sexual intercourse with a person who was under 12 years old, persons who were convicted of engaging in sexual intercourse with a person who was under 16 years old by use or threat of force or violence, persons over the age of 18 who were convicted of engaging in sexual contact with a person who was under 16 years old by use or threat of force or violence, and, at the discretion of the Department of Corrections (DOC), as a condition of their release, persons on probation, extended supervision, or parole for committing a sex offense; 2) any registered sex offender if his or her registration requirement is based on a serious child sex offense, as defined in the bill; 3) persons placed on supervised release, and 4) persons who committed any other type of sex offense that triggers the sex offender registration requirements if DOC requires the provisions to apply.

IN 5 A

Persons in the first group and second group are subject to the special license plate provisions established in the bill as long as they are subject to the GPS tracking requirement or the requirement to register as a sex offender unless a court grants a petition to terminate the requirement to have the special license plate. The court may grant a petition if: 1) the person has not been convicted of a crime that was committed while the person was subject to the special license plate provisions; 2) the person has been subject to the special license plate provisions for at least 20 years; and 3) the court determines that requiring that the person have the special license plate is no longer necessary to protect the public. If the court denies a person's petition, the person may not file a subsequent petition for five years. In addition, the court may grant a petition filed by DOC with respect to a person in the first, second, or third group if: 1) the petition alleges that the person is permanently physically incapacitated; 2) it includes affidavits from two physicians that explain the nature of the person's permanent physical incapacitation; and 3) the court determines that the person is permanently physically incapacitated so that he or she is not a danger to the public.

This bill reconciles 2005 Wisconsin Acts 430, 431, and 437. In 2005 Wisconsin Acts 430 and 437, sections 948.02 (1) (first-degree sexual assault of a child) and 948.025 (repeated acts of sexual assault of the same child) were renumbered and amended in ways that were not compatible. This bill repeals and recreates these statutes to accommodate the renumbering and to include all of the substantive provisions but intends no substantive change with the repeal and recreate.

In addition, 2005 Wisconsin Act 437 created a Class A felony for first-degree sexual assault and repeated acts of sexual assault of the same child, which includes both sexual intercourse and sexual contact, that results in great bodily harm to the victim (Class A felony). But the 25-year mandatory minimum incarceration provisions and the global positioning system (GPS) tracking provisions created in 2005 Wisconsin Acts 430 and 431, respectively, do not currently apply to the Class A felony. This bill applies the 25-year mandatory minimum incarceration requirement and the GPS tracking requirement to the Class A felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 25.40 (1) (a) 3. of the statutes is amended to read:

2 25.40 (1) (a) 3. Revenues collected under ss. 341.09 (2) (d), (2m) (a) 1., (4), and
3 (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), ^{(6y)↑} and (8), 341.145 (3), 341.16 (1)
4 (a) ~~and (b) to (c)~~, (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a),
5 (b), and (c), (4), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7),
6 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3),
7 341.305 (3), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14
8 (1r), that are pledged to any fund created under s. 84.59 (2).

✓
9 **SECTION 2.** 84.59 (2) (b) of the statutes is amended to read:

10 84.59 (2) (b) The department may, under s. 18.562, deposit in a separate and
11 distinct special fund outside the state treasury, in an account maintained by a
12 trustee, revenues derived under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2),
13 (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), ^{(6y)↑} and (8), 341.145 (3), 341.16 (1) (a) ~~and (b) to~~
14 (c), (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), (4),
15 and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1),
16 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3), 341.305 (3),
17 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14 (1r). The
18 revenues deposited are the trustee's revenues in accordance with the agreement
19 between this state and the trustee or in accordance with the resolution pledging the
20 revenues to the repayment of revenue obligations issued under this section. Revenue

obligations issued for the purposes specified in sub. (1) and for the repayment of which revenues are deposited under this paragraph are special fund obligations, as defined in s. 18.52 (7), issued for special fund programs, as defined in s. 18.52 (8).

SECTION 3. 165.8285 (1m) of the statutes is created to read:

165.8285 (1m) For the purpose of determining if a person is violating s. 301.49 (3), the department of justice shall, through the transaction information for management of enforcement system, provide local law enforcement agencies with access to the information provided under s. 301.49 (2m) by the department of corrections ~~under s. 301.49 (2m) (a) or by the department of health and family services under s. 301.49 (2m) (b).~~

SECTION 4. 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act 431, is amended to read:

301.48 (1) (e) 1. Section 948.02 (1) ~~(am)~~, (b), (c), or (d) or 948.025 (1) (a), ~~(b)~~, or ~~(ag)~~ (c).

SECTION 5. 301.48 (1) (e) 2. d. of the statutes is created to read:

301.48 (1) (e) 2. d. The actor has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and the sexual contact or sexual intercourse results in great bodily harm, as defined in s. 939.22 (14), to the person.

SECTION 6. 301.49 of the statutes is created to read:

301.49 Vehicle registration plates for certain sex offenders. (1) no fl

DEFINITIONS. In this section:

(a) "Serious child sex offense" has the meaning given in s. 301.48 (1) (e).

(b) "Sex offense" means any of the following offenses, other than one that is a serious child sex offense:

1. A sex offense, as defined in s. 301.45 (1d) (b).

1 2. A crime under federal law or the law of any state that is comparable to a crime
2 described in subd. 1.

3 ^{no 91} (2) WHO IS COVERED. ~~(a)~~ A person who is subject to the global positioning system
4 tracking requirement under s. 301.48 (2) or (2m) is subject to the vehicle registration
5 plate requirement and prohibition under sub. (3) until the person is released from
6 the global positioning system tracking requirement under s. 301.48 (2) or (2m) ^{keep} until
7 his or her death, or until otherwise terminated under sub. (6) or (7).

8 (b) If a person is required to be registered as a sex offender under s. 301.45 due
9 to a commission of a serious child sex offense and par. (a) does not apply, he or she
10 is subject to the vehicle registration plate requirement and prohibition under sub.
11 (3) until he or she is no longer required to register as a sex offender under s. 301.45,
12 until his or her death, or until otherwise terminated under sub. (6) or (7).

13 (c) If a person is on supervised release under s. 980.08 (6m) and par. (a) does
14 not apply, he or she is subject to the vehicle registration plate requirement and
15 prohibition under sub. (3) until his or her death or until otherwise terminated under
16 sub. (7).

17 (d) If a person is on parole, or has been discharged, under ch. 975, by the
18 department of health and family services following a commitment that was based on
19 his or her commission of a serious child sex offense and par. (a) does not apply, he or
20 she is subject to the vehicle registration plate requirement and prohibition under
21 sub. (3) until his or her death or until otherwise terminated under sub. (7).

22 (e) If a person has been convicted under federal law or the law of any other state
23 of a crime that is comparable to a serious child sex offense or found not guilty of or
24 not responsible for such a crime by reason of mental disease or mental defect, the
25 person is subject to the vehicle registration plate requirement and prohibition under

sub. (3) for as long as he or she resides in this state, is employed or carrying on a vocation, as defined in s. 301.45 (1d) (a), in this state, or is a student, as defined in s. 301.45 (1d) (c), in this state or until that requirement and that prohibition are otherwise terminated under sub. (6) or (7).

(f) If a person has committed a sex offense and par. (a), (b), (c), (d), or (e) does not apply, the department may require the person to comply with sub. (3) as a condition of the person's probation, extended supervision, or parole.

(2)(a) INFORMATION ACCESS. (a) The department shall provide to the department of justice information sufficient to identify the persons who are covered under sub.

(2) (a), (b), (e), or (f) for the purpose of s. 165.8285 (1m).

(b) Unless par. (a) requires the department to provide to the department of justice information sufficient to identify the persons who are covered under sub. (2) (c) or (d), the department of health and family shall provide to the department of justice information sufficient to identify the persons who are covered under sub. (2) (c) or (d) for the purpose of s. 165.8285 (1m).

(3) VEHICLE REGISTRATION PLATE REQUIREMENTS. (a) A person covered under sub. (2) who applies to the department of transportation for registration of a motor vehicle under ch. 341 shall identify himself or herself in the application as a person to whom special registration plates shall be issued under s. 341.14 (6y).

(b) If a person registered in his or her name any motor vehicle under ch. 341 prior to becoming covered under sub. (2), the person shall, immediately after becoming covered under sub. (2), apply to the department of transportation for replacement registration plates under s. 341.16 (1) (c) for each such vehicle, identifying himself or herself in the application for replacement registration plates as a person to whom special registration plates shall be issued under s. 341.14 (6y).

1 (c) A person covered under sub. (2) may not operate on a highway, as defined
2 in s. 340.01 (22), a motor vehicle required to be registered under ch. 341 unless it
3 displays registration plates issued under s. 341.14 (6y).

4 (4) PENALTIES. (a) Whoever intentionally violates sub. (3) (a) or (b) is guilty of
5 a Class G felony.

6 (b) Whoever intentionally violates sub. (3) (c) is guilty of a Class H felony.

7 (5) NOTIFICATION. (a) The department shall notify a person under sub. (2) (a),
8 ~~(b), (c), or (d)~~ of his or her need to comply with the vehicle registration plate
9 requirement and prohibition under sub. (3). ✓

10 (b) If the person is not already required to be notified under par. (a), the
11 department of health and family services shall notify the person under sub. (2) (c)
12 or (d) of his or her need to comply with the vehicle registration plate requirement and
13 prohibition under sub. (3).

14 (c) After notifying a person under par. (a) or (b) of the need to comply with this
15 section, the person who is providing the notification shall require the person who is
16 being notified to read and sign a form stating that he or she has been informed of the
17 requirements of this section. ✓

18 (d) It is not a defense to liability under sub. (4) (a) or (b) that the person subject
19 to sub. (3) was not required to read and sign a form under par. (c), was not provided
20 with a form to read and sign under par. (c), or failed or refused to read or sign a form
21 under par. (c). It is not a defense to liability under sub. (4) (a) or (b) that the person
22 subject to sub. (3) did not receive notice under this subsection from the department
23 of health and family services or the department of corrections.

24 (6) OFFENDER'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT. (a)
25 Subject to par. (b), a person who is subject to sub. (3) may file a petition requesting

SECTION 6

1 that the requirement and the prohibition in sub. (3) be terminated for him or her.
2 A person shall file a petition requesting termination of the requirement and the
3 prohibition in sub. (3) with the circuit court for the county in which the person was
4 convicted or found not guilty or not responsible by reason of mental disease or defect.

5 (b) 1. A person may not file a petition requesting termination of the
6 requirement and the prohibition in sub. (3) if he or she has been convicted of a crime
7 that was committed while he or she was subject to sub. (3).

8 2. A person may not file a petition requesting termination of the requirement
9 and the prohibition in sub. (3) earlier than 20 years after the date on which the person
10 first became subject to sub. (3). If a person files a petition requesting termination
11 of the requirement and the prohibition in sub. (3) at any time earlier than 20 years
12 after the date on which the person first became subject to sub. (3), the court shall
13 deny the petition without a hearing.

14 3. This subsection does not apply to a person described in sub. (2) (c) or in s.
15 301.48 (2) (b).

16 (c) Upon receiving a petition requesting termination of the requirement and the
17 prohibition in sub. (3), the court shall send a copy of the petition to the district
18 attorney responsible for prosecuting the offense that was the basis for sub. (3)
19 applying to the petitioner. Upon receiving the copy of the petition, the district
20 attorney shall conduct a criminal history record search to determine whether the
21 petitioner has been convicted of a criminal offense that was committed while he or
22 she was subject to sub. (3). No later than 30 days after the date on which he or she
23 receives the copy of the petition, the district attorney shall report the results of the
24 criminal history record search to the court and may provide a written response to the
25 petition.

1 (d) After reviewing a report submitted under par. (c) concerning the results of
2 a criminal history record search, the court shall do whichever of the following is
3 applicable:

4 1. If the report indicates that the petitioner has been convicted of a criminal
5 offense that was committed while he or she was subject to sub. (3), the court shall
6 deny the petition without a hearing.

7 2. If the report indicates that the petitioner has not been convicted of a criminal
8 offense that was committed while he or she was subject to sub. (3), the court shall
9 order the petitioner to be examined under par. (e), shall notify the department that
10 it may submit a report under par. (f) and shall schedule a hearing on the petition to
11 be conducted as provided under par. (g).

12 (e) A petitioner who is entitled to a hearing under par. (d) 2. shall be examined
13 by a person who is either a physician or a psychologist licensed under ch. 455 and who
14 is approved by the court. The physician or psychologist who conducts an examination
15 under this paragraph shall prepare a report of his or her examination that includes
16 his or her opinion of whether the petitioner is a danger to the public. The physician
17 or psychologist shall file the report of his or her examination with the court within
18 60 days after completing the examination, and the court shall provide copies of the
19 report to the petitioner and the district attorney. The contents of the report shall be
20 confidential until the physician or psychologist testifies at a hearing under par. (g).
21 The petitioner shall pay the cost of an examination required under this paragraph.

22 (f) After it receives notification from the court under par. (d) 2., the department
23 may prepare and submit to the court a report concerning the petitioner. If the
24 department prepares and submits a report under this paragraph, the report shall
25 include information concerning the petitioner's conduct while subject to sub. (3) and

1 an opinion as to whether subjecting the petitioner to sub. (3) is still necessary to
2 protect the public. When a report prepared under this paragraph has been received
3 by the court, the court shall, before the hearing under par. (g), disclose the contents
4 of the report to the attorney for the petitioner and to the district attorney. When the
5 petitioner is not represented by an attorney, the contents shall be disclosed to the
6 petitioner.

7 (g) A hearing on a petition requesting termination of the requirement and the
8 prohibition in sub. (3) may not be conducted until the petitioner has been examined
9 and a report of the examination has been filed as provided under par. (e). At the
10 hearing, the court shall take evidence it considers relevant to determining whether
11 sub. (3) should continue to apply because the petitioner is a danger to the public. The
12 petitioner and the district attorney may offer evidence relevant to the issue of the
13 petitioner's dangerousness and the continued need for sub. (3) to apply.

14 (h) The court may grant a petition requesting termination of the requirement
15 and the prohibition in sub. (3) if it determines after a hearing under par. (g) that
16 subjecting the petitioner is no longer necessary to protect the public.

17 (i) If a petition filed under this subsection is denied after a hearing under par.
18 (g), the person may not file a subsequent petition under this subsection until at least
19 5 years have elapsed since the most recent petition was denied.

20 **(7) DEPARTMENT'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT.**

21 (a) The department may file a petition requesting that the requirement and the
22 prohibition in sub. (3) be terminated with respect to a person if the person is
23 permanently physically incapacitated. The petition shall include affidavits from 2
24 physicians that explain the nature of the person's permanent physical
25 incapacitation.

1 (b) 1. The department shall file a petition under par. (a) with the circuit court
2 for the county in which the person was convicted or found not guilty or not
3 responsible by reason of mental disease or defect or, in the case of a person described
4 in sub. (2) (c) or s. 301.48 (2) (b), the circuit court for the county in which the person
5 was found to be a sexually violent person.

6 2. The department shall send a copy of a petition filed under subd. 1. to the
7 district attorney responsible for prosecuting the offense that was the basis for sub.
8 (3) applying to the person or, in the case of a person described in sub. (2) (c) or s. 301.48
9 (2) (b), the agency that filed the petition under s. 980.02.

10 (c) Upon its own motion or upon the motion of the party to whom the petition
11 was sent under par. (b) 2., the court may order that the person to whom the petition
12 relates be examined by a physician who is approved by the court. The physician who
13 conducts an examination under this paragraph shall prepare a report of his or her
14 examination that includes his or her opinion of whether the person is permanently
15 physically incapacitated. The physician shall file the report of his or her examination
16 with the court within 60 days after completing the examination, and the court shall
17 provide copies of the report to the department and the party to whom the petition was
18 sent under par. (b) 2. The contents of the report shall be confidential until the
19 physician testifies at a hearing under par. (d). The department shall pay the cost of
20 an examination required under this paragraph.

21 (d) The court shall conduct a hearing on a petition filed under par. (b) 1., but
22 if the court has ordered a physical examination under par. (c), the hearing may not
23 occur until after the examination is complete and a report of the examination has
24 been filed as provided under par. (c). At the hearing, the court shall take evidence
25 it considers relevant to determining whether the person to whom the petition relates

1 is permanently physically incapacitated so that he or she is not a danger to the
2 public. The department and the party to whom the petition was sent under par. (b)
3 2. may offer relevant evidence regarding that issue.

4 (e) The court may grant a petition filed under par. (b) 1. if it determines after
5 a hearing under par. (d) that the person to whom the petition relates is permanently
6 physically incapacitated so that he or she is not a danger to the public.

7 **SECTION 7.** 341.01 (2) (c) of the statutes is created to read:

8 341.01 (2) (c) "Sex offender" means a person who is covered under s. 301.49 (2). 1

9 **SECTION 8.** 341.08 (1m) of the statutes is amended to read:

10 341.08 (1m) The forms for application for original registration and for renewal
11 of registration under sub. (1) shall include the information required under s. 85.103
12 (2) and, the applicant's birth date, and whether the applicant is a sex offender.

13 **SECTION 9.** 341.14 (6y) of the statutes is created to read:

14 341.14 (6y) (a) Upon application by a person who is a sex offender, the
15 department shall issue and deliver to the person plates of a special design, in lieu of
16 the plates that ordinarily would be issued for the vehicle, and shall renew the plates.
17 The plates shall have a chartreuse-colored background. The department shall
18 design the plates so as to readily apprise law enforcement officers of the fact that the
19 vehicle is owned by a sex offender. ^{(A fee of \$30⁵ prescribed} ~~No charge~~ in addition to the registration fee shall
20 be ^{charged} ~~made~~ for the issuance or renewal of such plates. If at any time the owner of the
21 vehicle is no longer a sex offender, the owner may dispose of these special plates in
22 a manner prescribed by the department and shall obtain replacement plates for the
23 vehicle.

24 **SECTION 10.** 341.145 (1) (g) of the statutes is created to read:

1 341.145 (1) (g) A registration plate of the same color and design as provided in
2 s. 341.14 (6y) for a vehicle registered by a sex offender, which displays a registration
3 number composed of letters or numbers, or both, not exceeding 6 positions and not
4 less than one position, requested by the applicant.

5 **SECTION 11.** 341.145 (1g) (f) of the statutes is created to read:

6 341.145 (1g) (f) The department may issue personalized registration plates
7 under sub. (1) (g) to a person who is required to obtain special plates issued under
8 s. 341.14 (6y). ✓

9 **SECTION 12.** 341.16 (1) (c) of the statutes is created to read:

10 341.16 (1) (c) Upon receipt of an application by a sex offender required under
11 s. 301.49 (3) (b) to be issued special registration plates under s. 341.14 (6y), along
12 with a fee of \$¹⁵~~10~~ for each plate, the department shall issue replacement plates under
13 s. 341.14 (6y). ✓ Upon receipt of these replacement registration plates, the applicant
14 shall remove and destroy all registration plates replaced. ✓

15 **SECTION 13.** 341.16 (4) of the statutes is amended to read:

16 341.16 (4) Any person issued replacement plates who fails to destroy the
17 original plates as required by sub. (1) (c), (2), or (3) may be required to forfeit not more
18 than \$200.

19 **SECTION 14.** 939.616 (1g) of the statutes is created to read:

20 939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or
21 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make
22 an extended supervision eligibility date determination on a date that will occur
23 before the person has served a 25-year term of confinement in prison.

24 **SECTION 15.** 939.617 (1) of the statutes, as created by 2005 Wisconsin Act 430,
25 is renumbered 939.616 (1r) and amended to read:

1 939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or
2 948.025 (1) (a) (b), the court shall impose a bifurcated sentence under s. 973.01. The
3 term of confinement in prison portion of the bifurcated sentence shall be at least 25
4 years. Otherwise the penalties for the crime apply, subject to any applicable penalty
5 enhancement.

6 **SECTION 16.** 939.617 (2) of the statutes, as created by 2005 Wisconsin Act 430,
7 is renumbered 939.616 (2) and amended to read:

8 939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025
9 (1) ~~(ag)~~ (c), the court shall impose a bifurcated sentence under s. 973.01. The term
10 of confinement in prison portion of the bifurcated sentence shall be at least 5 years.
11 Otherwise the penalties for the crime apply, subject to any applicable penalty
12 enhancement.

13 **SECTION 17.** 939.617 (3) of the statutes, as created by 2005 Wisconsin Act 430,
14 is renumbered 939.616 (3).

15 **SECTION 18.** 948.02 (1) of the statutes is repealed and recreated to read:

16 948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (a) In this subsection, "sexual
17 intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal
18 intercourse between persons or any intrusion of any inanimate object into the genital
19 or anal opening either by the defendant or upon the defendant's instruction. The
20 emission of semen is not required.

21 (am) Whoever has sexual contact or sexual intercourse with a person who has
22 not attained the age of 13 years is guilty of a Class A felony if the sexual contact or
23 sexual intercourse results in great bodily harm to the person.

24 (b) Whoever has sexual intercourse with a person who has not attained the age
25 of 12 years is guilty of a Class B felony.

1 (c) Whoever has sexual intercourse with a person who has not attained the age
2 of 16 years by use or threat of force or violence is guilty of a Class B felony.

3 (d) Whoever has sexual contact with a person who has not attained the age of
4 16 years by use or threat of force or violence is guilty of a Class B felony if the actor
5 is at least 18 years of age when the sexual contact occurs.

6 (e) Whoever has sexual contact with a person who has not attained the age of
7 13 years is guilty of a Class B felony.

8 **SECTION 19.** 948.025 (1) of the statutes is repealed and recreated to read:

9 948.025 (1) (a) A Class A felony if at least 3 of the violations were violations of
10 s. 948.02 (1) (am).

11 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
12 (am), (b), or (c) but fewer than 3 of the violations were violations of s. 948.02 (1) (am).

13 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
14 (am), (b), (c), or (d) but fewer than 3 of the violations were violations of s. 948.02 (1)
15 (am), (b), or (c).

16 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
17 (am), (b), (c), (d), or (e) but fewer than 3 of the violations were violations of s. 948.02
18 (am), (b), (c), or (d).

19 **SECTION 20.** 948.025 (2) of the statutes is repealed and recreated to read:

20 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find
21 the defendant guilty the members of the jury must unanimously agree that at least
22 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need
23 not agree on which acts constitute the requisite number.

24 (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant
25 guilty the members of the jury must unanimously agree that at least 3 violations of

s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

(c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

(d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), (c), (d), or (e) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), (d), or (e).

SECTION 21. Nonstatutory provisions.

(1) In this section, "sex offender" has the meaning given in section 341.01 (2) (c) of the statutes, as created by this act. ✓

(2) Not later than 60 days after the effective date of this subsection, a person who, as of the effective date of this subsection, is a sex offender and who has any motor vehicle registered in his or her name under chapter 341 of the statutes shall apply to the department of transportation for replacement registration plates for each such vehicle, identifying himself or herself in the application as a person to whom special registration plates shall be issued under section 341.14 (6y) of the statutes, as created by this act. Upon receipt of such an application, along with a fee of \$10 for each plate, the department of transportation shall issue to the applicant replacement registration plates under section 341.14 (6y) of the statutes, as created

1 by this act. Upon receipt of these replacement registration plates, the applicant shall
2 remove and destroy all registration plates replaced. ✓

3 **SECTION 22. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) The treatment of sections 25.40 (1) (a) 3., 84.59 (2) (b), 301.49, 341.01 (2) (c),
6 341.08 (1m), 341.14 (6y), 341.145 (1) (g) and (1g) (f), and 341.16 (1) (c) and (4) of the
7 statutes and SECTION 21 of this act take effect on the first day of the 6th month
8 beginning after publication. ✓

9 (2) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect
10 on July 1, 2007. ✓
11

(END)

S-Note

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0702/linsch
CMH&ARG:lmk:rs

1

Insert A

109 who, on or after July 1, 2007, are placed on probation, released to extended supervision or parole, released from prison, or placed on conditional release after committing certain sex offenses against a child or are placed on supervised release or discharged after having been committed for treatment as sexually violent persons. ✓
If the person is discharged from the GPS tracking requirement, he or she is no longer subject to the special license plate provisions established in the bill.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/1dn

ARG:.....

lmk

(date)

The attached draft adds an additional fee of \$30, for each registration period, for the sex offender special plates. It also increases the replacement plate fee to \$15 per plate. I do not know how much revenue this will generate for DOT or if it will be sufficient to cover DOT's costs. The attached draft does *not* include an appropriation change to increase funding to DOT under s. 20.395 (5) (cq) relating to DMV operations. (I cannot include such an appropriation change without knowing the dollar amount of the increase.) Accordingly, while the draft may increase revenues to DOT, it doesn't allow these revenues to offset costs to DOT in the relevant appropriation.

Aaron R. Gary

Legislative Attorney

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/1dn
ARG:lmk:rs

March 9, 2007

The attached draft adds an additional fee of \$30, for each registration period, for the sex offender special plates. It also increases the replacement plate fee to \$15 per plate. I do not know how much revenue this will generate for DOT or if it will be sufficient to cover DOT's costs. The attached draft does *not* include an appropriation change to increase funding to DOT under s. 20.395 (5) (cq) relating to DMV operations. (I cannot include such an appropriation change without knowing the dollar amount of the increase.) Accordingly, while the draft may increase revenues to DOT, it doesn't allow these revenues to offset costs to DOT in the relevant appropriation.

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Barman, Mike

From: Lindstedt, Daniel
Sent: Tuesday, March 27, 2007 5:11 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-0702/1 Topic: Special license plates for child sex offenders

Please Jacket LRB 07-0702/1 for the ASSEMBLY.